# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JASON WADE MOORE Claimant	}
VS.	{ Docket No. 193,365
DALE PATRY MASONRY	Docker No. 193,303
Respondent AND	
STATE FARM FIRE & CASUALTY COMPANY Insurance Carrier	}

# ORDER

Claimant appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes dated February 29, 1996. The Appeals Board heard oral argument on July 25, 1996.

#### **A**PPEARANCES

Claimant appeared by and through his attorney, Roger A. Riedmiller of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Bryce A. Abbott of Wichita, Kansas.

### RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

#### Issues

The Administrative Law Judge found claimant had failed in his burden of proving his accidental injury arose out of and in the course of his employment with the respondent. Accordingly, an award for workers compensation benefits was denied. The issues before the Appeals Board are the same as those presented to the Administrative Law Judge.

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and considered the briefs and arguments of the parties, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law enumerated in the Award by the Administrative Law Judge are found to be accurate and appropriate and are hereby adopted by the Appeals Board as its own as if specifically set forth herein. The Appeals Board agrees that claimant has not sustained his burden of proof that his August 10, 1994 accident and injury arose out of and in the course of his employment with respondent. To the contrary, claimant's accident occurred during claimant's lunch break. Furthermore, the accidental injury was not the result of horseplay which constituted a regular incident of the employment.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated February 29, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.		
Dated this da	y of July 1996.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD WEWDER	

c: Roger A. Riedmiller, Wichita, KS Bryce A. Abbott, Wichita, KS Nelsonna Potts Barnes, Administrative Law Judge Philip S. Harness, Director